

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 5-4-2002 passed by the Additional Sessions Judge No.1, Udaipur (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 11/2002, whereby the revision petition filed by the petitioner against the order dated 28-9-2001 passed by the Additional

Chief Judicial Magistrate No.3, Udaipur (for short, "the trial Court" hereinafter) was dismissed on the ground of non-maintainability of the revision petition.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the courts below.

The non-petitioners No.1 and 2 are facing trial for the offence under Section 494 IPC, which is triable as a warrant case.

It is contended by the learned counsel for the petitioner that sub-section (2) of Section 244 of the Code permits the prosecution to produce witnesses and for which the prosecution may request the Court to direct the witnesses to appear and produce any document. Section 244 of the Code provides that when, on any warrant case instituted otherwise than on police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. Sub-section (2) of Section 244 of the Code provides that the Magistrate may, on the application of the prosecution issue a summon to any of its witnesses directing him to attend or to produce any document or other thing. Thus, sub-section (2) of Section 244 of the Code, in a clear term, provides that the Magistrate, on an application moved by the prosecution, may issue a summon to any of the witness directing him to appear or

to produce any document or other thing.

In the instant case, in the List of Witnesses, Kothari Maternity, Machhala Magra has been shown as a witness. It is contended by the learned counsel for the petitioner that Dr. Sudha Kothari of Kothari Maternity, Machhala Magra, is a material witness in the case for the reason that non-petitioner No.2 Smt. Jaishree, who alleged to have contacted second marriage with non-petitioner No.1 Vijay Kumar and, therefore, as being wife of non-petitioner No.1, gave birth to a female child on 11-9-1994 in the said hospital and Dr. Sudha Kothari is the Gynecologist in the said Maternity Home, in whose Unit, the child was born and, therefore, the petitioner requested the trial Court to summon Dr. Sudha Kothari along with the documents relating to giving birth of a female child by non-petitioner No.2 on 11-9-1994.

Keeping in view of the provisions of Section 244 (2) of the Code and the fact that in the list of witnesses, Kothari Maternity, Machhala Magra has been shown as a witness and Dr. Sudha Kothari is said to be the Gynecologist in the said Maternity Home, in whose presence, non-petitioner No.2 Smt. Jaishree gave birth to a female child on 11-9-1994, in my view, the trial Court fell in error in declining to summon the witness at the cost of the petitioner, as also the Revisional Court.

In the result, the criminal miscellaneous petition is

allowed. The orders passed by the trial Court as well as the Revisional Court are set aside. The trial Court is directed to summon Dr. Sudha Kothari of Kothari Maternity, Machhala Magra along with the relevant record of the said Maternity Home relating to birth of a female child given by non-petitioner No.2 Smt. Jaishree.

(H.R. PANWAR), J.

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